

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

\* \* \*

GERALD VON TOBEL,

Plaintiff,

v.

DR. JOHNS, et. al.,

Defendants.

Case No. 3:17-CV-00022-RCJ-CLB

**ORDER DENYING MOTION FOR LEAVE  
TO FILE REQUEST FOR SANCTIONS,  
MOTION TO SUPPLEMENT, AND  
SECOND MOTION FOR SANCTIONS,  
AND GRANTING MOTION TO SEAL**

[ECF Nos. 110, 112, 114, 116]

This case involves a civil rights action filed by Plaintiff Gerald Von Tobel ("Von Tobel") against Defendant Marsha Johns ("Johns"). Currently pending before the Court are several motions filed by Von Tobel related to the settlement in this case. Von Tobel filed a motion for leave to file a request for sanctions for non-compliance with the settlement agreement, (ECF No. 110). Johns opposed the motion (ECF Nos. 115, 117)<sup>1</sup>. No reply was filed. Von Tobel also filed two motions to supplement the original motion, (ECF Nos. 112, 114).

**I. DISCUSSION**

On December 12, 2022, the Court was notified that the parties had reached a

---

<sup>1</sup> Johns filed a motion for leave to file Exhibit C to the response under seal based on it containing confidential institutional and medical information. (ECF No. 116.) When the documents proposed for sealing are "more than tangentially related" to the merits of the case, the Court applies the compelling reasons standard to determine whether sealing is appropriate. See *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1099 (9th Cir. 2016). Under the compelling reasons standard, "a court may seal records only when it finds 'a compelling reason and articulate[s] the factual basis for its ruling, without relying on hypothesis or conjecture.'" *United States v. Carpenter*, 923 F.3d 1172, 1179 (9th Cir. 2019) (quoting *Ctr. for Auto Safety*, 809 F.3d at 1096-97) (alteration in original). Here, the referenced exhibits contains Plaintiff's sensitive health information, as well as confidential institutional information. Balancing the need for the public's access to information regarding medical treatment against the need to maintain the confidentiality of the information weighs in favor of sealing these exhibits. Accordingly, the Court finds compelling reasons exist to seal the document, and thus the motion, (ECF No. 116), is granted.

1 settlement in this case and were ordered to file a stipulation and order to dismiss by no  
2 later than December 31, 2022. (ECF No. 100.) On January 10, 2023, the Court issued  
3 an order directing the parties to appear for a status conference as no stipulation had  
4 been submitted. (ECF No. 102.) The Court noted that the status conference would be  
5 vacated should the parties file a stipulation and order to dismiss prior to the hearing date.  
6 (*Id.*) On January 17, 2023, the parties filed their stipulation to dismiss, (ECF No. 104),  
7 which was granted the same day (ECF No. 106).<sup>2</sup> On February 8, 2023, Von Tobel filed  
8 the instant motion for leave to file a request for sanctions for non-compliance with the  
9 settlement agreement. (ECF No. 110.) Von Tobel also filed two supplements to his  
10 motion, which he claims detail ongoing constitutional violations by Defendant. (ECF Nos.  
11 112, 114.) The Court interprets the motion as one to enforce the settlement.

12 “Federal courts are courts of limited jurisdiction” and possess only the power  
13 authorized by the Constitution and United States statutes. *Kokkonen v. Guardian Life*  
14 *Ins. Co. of America*, 511 U.S. 375, 377 (1994). This power cannot be expanded by  
15 judicial order. *Id.* (citing *Am. Fire & Casualty Co. v. Finn*, 341 U.S. 6 (1951)). It is well-  
16 settled there is a presumption a cause of action lies outside the federal court’s  
17 jurisdiction, and that the party asserting jurisdiction has the burden of establishing it.  
18 *Kokkonen*, 511 U.S. at 377. Federal courts must have either an independent  
19 (constitutional or statutory) basis for jurisdiction over a cause of action, or jurisdiction  
20 pursuant to the court’s inherent powers or ancillary jurisdiction. *Id.* at 377-78.

21 In *Kokkonen*, the Supreme Court held federal courts do not have inherent or  
22 ancillary jurisdiction to enforce a settlement agreement merely because the subject of  
23 the settlement was a federal lawsuit. *Id.* at 381. The Court stated ancillary jurisdiction is  
24 generally permissible under two circumstances: “(1) to permit disposition by a single  
25 court of claims that are, in varying respects and degrees, factually interdependent; and  
26 (2) to enable a court to function successfully, that is, to manage its proceedings, vindicate

---

27 <sup>2</sup> While the case was administratively closed, it does not appear judgment was ever  
28 entered.

1 its authority, and effectuate its decrees.” *Id.* at 379-80 (internal citations omitted). As to  
2 the first circumstance, the Court found it would not be particularly efficient for a federal  
3 court to exercise jurisdiction over what is essentially a breach of contract claim because  
4 the facts underlying the breach of a settlement agreement “have nothing to do with” the  
5 facts of the underlying case. *Id.* at 380.

6 As to the second circumstance, the Court held a federal court has ancillary  
7 jurisdiction to enforce a settlement agreement if the parties’ obligation to comply with the  
8 terms of the settlement agreement had been made part of the order of dismissal either  
9 by separate provision (such as a provision “retaining jurisdiction” over the settlement  
10 agreement), or by incorporating the terms of the settlement agreement into the order. *Id.*  
11 at 381; *K.C. ex rel. Erica C. v. Torlakson*, 762 F.3d 963, 967 (9th Cir. 2014). Jurisdiction  
12 exists in such a case because a breach of the settlement agreement violates a court  
13 order. *Kelly v. Wengler*, 822 F.3d 1085, 1094 (9th Cir. 2016) (citing *Kokkonen*, 511 U.S.  
14 at 381). If the federal court has no independent jurisdiction over the settlement  
15 agreement, and absent making the settlement agreement part of the dismissal order,  
16 enforcement of the agreement is for the state courts. *See In re Valdez Fisheries Dev.*  
17 *Ass’n, Inc.*, 439 F.3d 545, 549 (9th Cir. 2006) (holding that when a bankruptcy court had  
18 “entered an order approving the settlement agreement and a second order dismissing  
19 the case, . . . stating that ‘[t]he conditions of the settlement hav[e] been fulfilled’” it did  
20 not retain jurisdiction over the settlement agreement, nor did it incorporate ‘the parties’  
21 obligation to comply with [its] terms’”). “Mere awareness and approval of the terms of the  
22 settlement agreement” by the judge are not enough to make the settlement agreement  
23 part of the dismissal order. *Kokkonen*, 511 U.S. at 381.

24 Neither of the factors identified in *Kokkonen* apply in this case. Therefore, this  
25 Court lacks jurisdiction to enforce the settlement agreement and must deny the motions.  
26 (ECF Nos. 110, 112, 114.) Further, to the extent Von Tobel seeks sanctions for alleged  
27 non-compliance with the settlement agreement, the Court is again without jurisdiction to  
28 decide these issues as they are essentially breach of contract claims.

1 Finally, even if the Court had jurisdiction to enforce the settlement agreement, it  
2 appears Von Tobel's motions are moot as Defendants have submitted evidence that Von  
3 Tobel is scheduled for the medical appointment contemplated in the settlement  
4 agreement. (See ECF No. 117 (sealed).) Therefore, there is nothing further for the Court  
5 to enforce from the settlement agreement nor is there any basis to impose sanctions.

6 **II. CONCLUSION**

7 Consistent with the above, **IT IS ORDERED** that Von Tobel's motion for leave to  
8 file a request for sanctions, and supplemental motions, (ECF Nos. 110, 112, 114), are  
9 **DENIED**.

10 **IT IS FURTHER ORDERED** that the motion to seal, (ECF No. 116), is **GRANTED**.

11 **IT IS FURTHER ORDERED** that the Clerk of Court **ENTER JUDGMENT** in  
12 accordance with the order dismissing this action with prejudice, (ECF No. 106).

13 **IT IS SO ORDERED.**

14 **DATED:** March 2, 2023.



**UNITED STATES MAGISTRATE JUDGE**